

SassafRAS River Association

P.O. Box 333
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www.sassafRASriver.org

July 29, 2011

The Honorable Ronald H. Fithian, President
Board of County Commissioners
400 High Street
Kent County, MD 21620

Dear President Fithian:

Enclosed please find comments from the SassafRAS River Association. They address a proposed industrial facility, a rubble dump, to operate in a fragile tributary of the already compromised SassafRAS River.

Based on our initial analysis of this proposal, and our prior knowledge and experience with this site, SRA opposes this development.

The reasons and problems are explained in the attached paper, pursuant to these points:

1. Proximity to Sensitive Jacob's Creek and Chesapeake Bay
2. Liner Systems at Rubble Dumps Fail
3. Permeability of Local Soils Renders Site Extremely Vulnerable
4. Groundwater Contamination Inevitable and Cannot Be Reversed
5. Existing Water Quality Impairments at the Site and in Kent County Already Are Serious
6. Inconsistency with the Kent County Code
7. Noncompliance with Public Land-Use Plan While Seeking Preferential Treatment

Sincerely,

Moira B. Croghan, Executive Director

cc: Commissioners

Planning Commissioners



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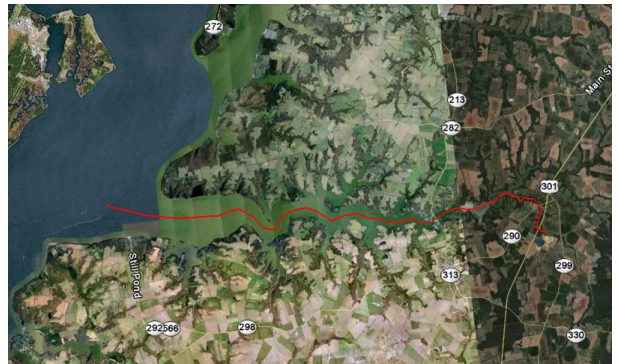
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Comments on the Proposed Kent Recycling & Land Reclamation (KRLR) Facility

There are impelling reasons, some listed below, that a rubble fill in the headwaters of the SassafRAS River poses serious threats to the citizens of Kent County. The project is located in an exceptionally vulnerable spot environmentally. From a natural resource management perspective, and the future of the County's water supplies and recreation, it is a very poor choice. Prior to picking a dump-site, a thorough analysis of all natural resource conditions in all parts of the County should be undertaken to make sure there is not a more suitable, sustainable location. This is a particularly defective location for waste materials and associated activities, as described below.

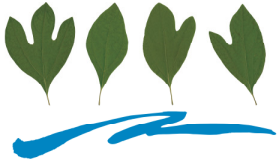
Proximity to Sensitive Jacob's Creek and Chesapeake Bay

The project is located in a very vulnerable spot environmentally, and dumping here is a danger to the public's health, safety and welfare. The SassafRAS River Watershed is small and delicate. At only 96 square miles in area, virtually every action on the land affects the health of the water. The Chesapeake Bay Program, the internationally recognized, multi-state consortium working creatively to protect the Bay from further



The proposed rubble fill site is in close proximity to the SassafRAS River and Chesapeake Bay; just 2.5 miles from the main stem of the SassafRAS and 16 miles from the Bay.

degradation, has ranked the SassafRAS watershed as one of the highest impact watersheds surrounding the Bay, due to its extremely high delivery rate of pollutants. This is a result of many factors, including geology, water currents, soil, land-use, pollution inputs and weather. Clearly, it would be unwise to compound this situation by intensifying industrial activity. The site proposed for the Kent Recycling and Land Reclamation Facility is directly adjacent to Jacob's



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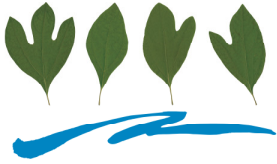
Creek, a tributary which flows into the main stem of the SassafRAS River just 2.5 miles downstream. SRA's long term, water quality program includes monitoring of a site in Jacobs Creeks. Already this tributary contains among the highest level of pollutants reaching the SassafRAS River. The Chesapeake Bay itself lies just 16 miles downstream from the proposed rubble dump. Proximity to our local, cherished water bodies is both alarming and worth pausing to contemplate. In Kent County, life revolves around the Chesapeake Bay and we are constantly reminded of its importance to our economy, recreation, health, and way of life. Thousands of boater, vacationers, and residential home-owners come to SassafRAS each summer to swim and enjoy this special River. Let us not take for granted how fortunate we are to have such a precious resource in our backyard, and forget our responsibility to be good stewards of the land and water. These waters are truly our life blood. Let us not waste them for short term benefit.

Liner Systems at Rubble Dumps Fail

While a properly installed and maintained rubble fill liner is crucial to the protection of water quality, there are a myriad of cases where environmental contamination has occurred due to failing liner systems, including within Kent County at the Nicholson Landfill. In reality, liner failure is ubiquitous and virtually inevitable. Even with a liner system constructed in accordance with MDE standards, no liner is foolproof and is likely to eventually fail. MDE oversight may be less than perfect. Considering the time span over which the facility would operate, many situations have the potential to compromise that liner, from human negligence to burrowing animals. The chances of impending failure and groundwater leakage are high.

Permeability of Local Soils Renders Site Extremely Vulnerable

Kent County Soils are prized by farmers for their fertility and capacity to drain well. But soils that drain well present a serious concern when we introduce the potential for pollutants to be released into the environment. Leachate, comingled rainwater and other contaminants that can escape even properly managed rubble dump site, are a tremendous concern in areas that have soils of high permeability. In the event of a release of pollutants, water quality contaminants have little chance to be filtered out, broken down or sequestered before reaching our shallow



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ground water aquifer. Dumps like this receive a myriad of substances extremely dangerous to human health. They also can affect the health of the ecosystem, the food-chain, and fisheries. Even if they attempt to restrict asbestos, such a large quantity of unidentified materials are rapidly shipped on a daily basis from varied sources, and not every substance can be isolated as to its contamination potential.

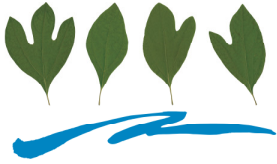
Groundwater Contamination Inevitable and Cannot Be Reversed

When the company made a presentation to the Kent County Board, a question arose about groundwater contamination. There naturally is a concern about drinking water supplies. Kent County residents in the area, and down gradient throughout the entire SassafRAS watershed, rely upon well water coming from the same aquifer that now is prone to greater pollution from the site.

The spokesperson for the rubble fill answered, saying that groundwater would be monitored before, during and after project activities. This approach evades the crux of the concern. Monitoring does nothing to prevent a problem, and by the time contaminants are detected, it is too late and there is no complete remedy.

While certain waste items may be prohibited from the dump, such as friable asbestos, everyone knows that it is easy to conceal trash items when buried in tons of waste, and this goes on frequently at large construction sites. A hauler may not even know all the substances they are carrying since no one has tracked which old, torn down buildings used asbestos paint, as an example. Often the owners themselves do not know.

Monitoring also falls short as the solution to impending groundwater pollution because it tends to identify the exact toxins it seeks to measure. There are thousands of harmful chemicals that could potentially seep from a rubble dump. Simply continuing to monitor may miss the actual contamination locations or fail to identify the specific toxins leaking. It is difficult to assess which chemicals are trickling out from the site. Toxins that are not measured may still affect human life and the environment. Once an aquifer contains the poisons, the damage is done, and monitoring does not rectify a problem.



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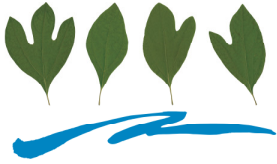
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Existing Water Quality Impairments at the Site and in Kent County are Already Serious

Without a doubt, a project like this will contribute sediment and nutrients in runoff. A new construction project of this magnitude, during both the start-up and the operational phases, generates a large amount of sediment waste and runoff. Even if erosion and sediment control practices are followed, and there is stormwater management on the site, none of these practices are completely effective and the pollution leaving the site will increase significantly. These will be estimated and added to Kent County's pollution control requirements.

The SassafRAS River is already under a Total Maximum Daily Load (TMDL) for several constituents—meaning the River can take no more pollution. The River has reached a condition where its natural ability to process and treat wastes has been exceeded. It is distressing that nature's powerful forces to restore her are being violated on a daily basis, right here, where the project is planned. Allowing additional wastes to reach the river and tributaries like Jacob's Creek causes more severe damage. The federal Clean Water Act mandates that no additional pollution sources, or loads such as runoff from a dump site's construction, can be added to waters that exceed their TMDL. Samples from Jacob's Creek already show excessive levels of turbidity, phosphates, nitrates and ammonium.

Throughout the Chesapeake Bay, there are and have been tremendous efforts to reduce nutrient and sediment loads going into the Bay through what is now being called the Bay wide pollution diet, its TMDL. Local governments now are being drawn more closely into the strategies and are responsible for defining and accomplishing the necessary reductions in the Watershed Implementation Planning effort. Now more than ever, it is critical that local governments scrutinize any and all potential impacts and additions of pollutants that a development may cause to affect water quality. If the health of Jacob's Creek and the SassafRAS River is further impaired by runoff or toxins from the proposed rubble dump, then not only is there a serious question about compliance with the Clean Water Act, but even greater reductions will be needed by Kent County to achieve the SassafRAS River TMDL. This brings a heavy burden on taxpayers and residents of the county. Each new load, as from this project, must be reduced elsewhere—as a cost to a farmer or municipality. The water quality issues currently facing the SassafRAS River are sobering and will prove more difficult and expensive to overcome with time. Adding new stressors to this fragile system defies sensibility. Dumps must



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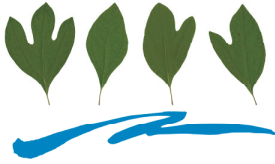
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be located in places farther away from headwaters to the Bay. It appears this site may be in a tidal Critical Area were there not a few farm ponds constructed which restrict the tidal flow.

Inconsistency with the Kent County Code

Kent Recycling and Land Reclamation proposes to pay for a Kent County employee to be located at the dump site and lists the County staff person in their fiscal analysis. This employee is intended to satisfy language within the exceptions section of the Kent County zoning ordinance, which states that a sanitary landfill or rubble fill must either be owned or managed by the County proper. In no instance does the role of the county employee envisioned by KRLC fit the definition of the site manager, possessing complete decision making authority over the operations, as described in the zoning ordinance.

Common definitions of “manage” include “to run”, “to direct” and “to control”. Management is not the same as inspection. Management as stated in the County’s ordinance implies that no other party on site would have a higher role; the site must be *managed* or *owned* by the County, i.e. one-in-the same. In diminishing the County employee’s role, and not providing them functions typically provided an absolute owner or true site-manager (financial control, scheduling, hiring, public & relations), KRLC devalues the importance of the zoning ordinance and thereby the public’s significance. If the law of the public entity charged with protecting our health and welfare is not important, then the best interests of the community and that of the environment may be disregarded and defiled. The DRRR proffered by KRLC goes even further to reduce the function and power of the County at the site. It is limited to carrying out inspections and environmental laws—rights it already had. Yet the County’s own laws state otherwise. The company intends to assume a function deemed so critical, important and threatening to the environment that the public would only entrust it to its own duly elected government. If the County did not own the Rubble fill, it had to manage it. The Agreement being considered by Kent County is not where true management is suggested. On the contrary, it says that only DRLR is solely responsible for business and logistical operations and management of the facility. When judging “management”, the bottom line is control. In this situation, the County will have lost control and the employee or contractor on-site will not be managing the rubble-fill as called for in the County’s ordinance.



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Noncompliance with Public's Land-Use Plan While Seeking Preferential Treatment

The KRLC proposal is contrary from the public's official objectives for this area, its Comprehensive Plan and zoning ordinances. The public agreed this land should be agricultural. KRLC suggests that they use the land differently, while also being exempt from certain regular procedures for evaluating this project that other citizens and applicants go through. This has been proffered in a Development Rights and Responsibilities Agreement (DRRA).

A deviation of this magnitude is startling - - first to change the land use from that approved by the citizens, second to avert the regular approval procedures the rest of us must use.

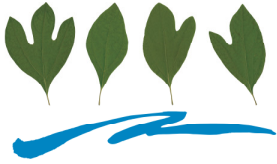
Also, KRLC proposes that the project be excused from future laws. They want a special deal no other applicant in Kent County has enjoyed. In the DRRA, KRLC expects that if a new ordinance is deemed necessary due to new conditions, then it will not apply to them, the company will be held above the new law.

Next, KRLC will proffer cash up-front for the County. If this encourages fast-tracking and greater their attention to this project, other pressing needs of the County will likely suffer, in a year when many County Departments had to sustain staff and budget cuts.

In the face of this looming environmental catastrophe, the public bears an enormous risk and burden. Property values, drinking water supplies, and the health of the SassafRAS River are likely to suffer at the hands of a company that may be trading the future of this watershed for a quick dollar.

Many hours of research and review must be spent by individual residents in the County who know that a "fill" is a dump is a dump. Fast-tracking the project prevents thorough analysis, and the types of understanding that only come out through the regular, ordained review processes.

During this time, through their taxes, citizens will be paying the entire cost for the needed reviews at the state and local level, and for the staff that are processing the KRLC proposal, while also needing to research the issues themselves and spend hours reaching their own conclusions.



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KRLC indicates they do not need the County's consent to build a rubble dump in upper SassafRAS River watershed. Their attorney, at the Commissioner's recent meeting, attempted to defend their intent to move forward with the facility without County approval. The validity of this approach is questionable but posing the menace reveals the character of the company. They would grant themselves carte blanche permission to bypass the comprehensive plan, zoning ordinances, site permits, and the input of the public's duly elected Commissioners. This declaration by Mr. Saunders would seem to indicate a company not interested in the community or in cooperation with local government over the course of the project's lifespan. This further suggests any employee funded by KRLR would be easily directed by the company, which is not the intent of the law.